

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MAXIE MCNABB,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:06cv664-MHT
)	
SANDERS LEAD COMPANY, INC.,)	
)	
Defendant.)	

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION TO LEAVE EVIDENTIARY RECORD OPEN
PENDING PRODUCTION OF PERSONNEL FILES**

COMES NOW, Defendant Sanders Lead Company, Inc., by and through the undersigned counsel of record, and does hereby respond to Plaintiff's Motion to Leave Evidentiary Record Open Pending Production of Personnel Files. In response thereto, Defendant states the following:

1. It is Defendant's position that Plaintiff's Motion was filed after the expiration of his original and extended time period to respond and that Plaintiff has failed to show any excusable neglect that would allow for the granting of his request.
2. On July 3, 2007, Plaintiff filed a Motion to Leave Evidentiary Record Open Pending Production of Personnel Files, hereinafter referred to as Motion to Leave the Record Open.
3. In said motion, Plaintiff fails to state any Federal Rule of Civil Procedure under which he is requesting this court to take action.

4. However, it seems that the Plaintiff is asking for an enlargement of a specific time period, which would fall under Rule 6(b) of the Federal Rules of Civil Procedure.
5. Plaintiff here is essentially requesting that the time period for him to fully respond to the Defendant's Motion for Summary Judgment be extended again.
6. Under Rule 6(b), the court may "order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect."
7. By order of the court, the time period for the Plaintiff to respond to Defendant's Motion for Summary Judgment was extended from an original date of June 18, 2007 until July 2, 2007. However, despite Plaintiff's request, the time period for Discovery was not extended and remained June 29, 2007. (See Doc. # 18, Order Regarding Motion for Reconsideration)
8. On June 18, 2007, Plaintiff filed a Motion to Compel certain discovery documents. Nowhere in his Motion to Compel does he request an enlargement of the time period to respond to the Defendant's Motion for Summary Judgment. (See Doc. # 19, Plaintiff's Motion to Compel)
9. The Court ruled on the Motion to Compel on the morning of July 2, 2007. (See Doc. # 24, Order Granting Motion to Compel)
10. Again, Plaintiff filed his Motion to Leave the Record Open on July 3, 2007,

after the expiration of his time period for filing his Response to the Motion for Summary Judgment and the expiration of the Discovery period.

11. Plaintiff failed to request an enlargement of the time period to respond prior to the expiration of his time period to respond. Therefore the only way to have the time period enlarged is to show unto this Court excusable neglect.
12. Nowhere in Plaintiff's Motion to Leave the Record Open is any excusable neglect explained or even mentioned.
13. It is Defendant's position that the Motion to Leave the Record Open was filed after the expiration of his original and extended time period to respond and that Plaintiff has failed to show any excusable neglect that would allow for the granting of his request.

WHEREFORE, for the above stated reasons, the Defendant respectfully requests that this Court deny Plaintiff's Motion to Leave the Record Open.

Respectfully submitted this the 16th day of July, 2007.

s/ N.J. Cervera
N.J. Cervera (CER001)
Frank P. Ralph (RAL002)
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CERTIFICATE OF SERVICE

I hereby certify that I have this date electronically filed the foregoing with the Clerk of Court using the CM/ECF system and served a copy of same by CM/ECF on this the 16th day of July, 2007:

Roderick T. Cooks, Esq.
WINSTON COOKS, LLC
The Penick Building
319 17th Street North
Birmingham, Alabama 35203

this the 16th day of July, 2007.

s/ N.J. Cervera
OF COUNSEL